

Index No.: 07 CIV 10365

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BERIAM ORTIZ,

Plaintiff

-against-

ERIN KATHLEEN BARLOW, TOYOTA MOTOR CREDIT, CORP. AND
CAROL SHERMAN,

Defendants

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGEMENT**

RESPECTFULLY SUBMITTED,

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Of Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
BERIAM ORTIZ,

Index No.: 07 CIV
10365

Plaintiff

v.

ERIN KATHLEEN BARLOW, TOYOTA MOTOR CREDIT,
CORP. AND CAROL SHERMAN,

Defendants
-----x

**MEMORANDUM OF LAW IN
SUPPORT OF CROSS-
MOTION FOR SUMMARY
JUDGMENT**

PRELIMINARY STATEMENT

This Memorandum of Law is submitted in support of the Cross-Motion by Defendant, Carol Sherman for an Order of Summary Judgment and a dismissal of the Complaint and any and all cross claims, and for such other and further relief as this Court deems just and proper.

QUESTION PRESENTED

WHETHER DEFENDANT CAROL SHERMAN, WHILE TRAVELLING WITH TRAFFIC ON THE BRUCKNER BOULEVARD EXPRESSWAY IS LIABLE TO ANY PARTY IN THIS LITIGATION AS A RESULT OF BEING STRUCK IN THE REAR BY PLAINTIFF BERIAN ORTIZ AFTER THE ORTIZ'S VEHICLE WAS STRUCK BY DEFENDANT ERIN KATHLEEN BARLOW

IT IS RESPECTFULLY SUBMITTED THAT THIS QUESTION SHOULD BE ANSWERED IN A NEGATIVE.

STATEMENT OF FACTS

Defendant Carol Sherman adopts the facts as stated by Plaintiff in her Memorandum of Law in support of Plaintiff's Motion for Partial Summary Judgment on Liability.

ARGUMENT

Defendant Carol Sherman adopts those arguments made by Plaintiff Berian Ortiz to the extent that they also apply to Defendant Carol Sherman.

In this litigation, Carol Sherman's vehicle was struck in the rear as she was proceeding with traffic on the Bruckner Boulevard Expressway.

Pursuant to Vehicle and Traffic Laws §1129(a) a driver is required to maintain a safe distance between vehicles and shall not follow another vehicle more closely than is reasonable and prudent. As cited in Plaintiff's Memorandum of Law, the failure to maintain a safe distance between vehicles constitutes negligence as a matter of law in the absence of a non-negligence explanation. See, Lifshits v. Variety Poly Bags, 278 A.D.2d 372 (2d Dep't 2000); Power v. Hupert, 260 A.D.2d 458 (2d Dep't 1999), Johnson v. Phillips, 261 A.D.2d 269 (1st Dep't 1999).

Defendant Sherman's action in driving her vehicle in slow moving traffic did not cause contact to be made by Plaintiff's vehicle with Defendant Barlow's vehicle. Further, Plaintiff Ortiz affirms in her Affidavit, attached to her moving papers, that after her vehicle was struck in the rear by Defendant Barlow's vehicle, her vehicle was caused to be pushed into Defendant Sherman's vehicle. There is no evidence put forward by any party that Defendant Sherman was negligent and that her

negligence was the proximate cause of the accident between Plaintiff and Co-Defendant Barlow.

CONCLUSION

An Order should be entered, pursuant to FRCP 56, granting Defendant, Carol Sherman Summary Judgment and a dismissal of plaintiff's Complaint and any and all Cross Claims, and for such other and further relief as this Court deems just and proper.

DATED: White Plains, New York
May 19, 2008

Yours, etc.,

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